IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of:	
Koichi Yamada and Allen M. Kay	Art Unit: 2181
Serial No.: 10/772,750	Examiner: Benjamin P. Geib
Filed: February 4, 2004	
For: SHARING IDLED PROCESSOR EXECUTION RESOURCES	

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Commissioner for Patents
P.O. Box 1450
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Dear Panel:

In response to the Final Office Action of March 4, 2010 ("the Final Office Action"), Applicants request review of the final rejection in the above-identified application. This request is being filed with a notice of appeal. No amendments are being filed with this request.

I. Claim Rejections -35 USC § 102(a)

The Office Action has rejected 1-3, 5, 10, 12, 13, and 15-24 under 35 U.S.C. § 102(a) as being being anticipated by Sandri et al., US Patent No. 7,428,732 (Sandri). However, the Office Action has failed to meet its burden of makings a prima facie case of anticipation for the claims, and such rejections should be withdrawn.

"[F]or anticipation under 35 U.S.C. 102, the reference must teach *every aspect* of the claimed invention ..." MPEP 706.02 (emphasis added). Sandri simply fails to disclose every aspect of the inventions claimed in Claims 1-5 and 10-24. The Examiner has therefore failed to meet his burden of making a prima facie case of anticipation.

In particular, Sandri does not disclose, teach nor suggest " in response to a first logical processor in the plurality of processors being scheduled to enter an idle state due to lack of scheduling tasks, making a processor execution resource previously reserved for the first logical processor available to any of the plurality of logical processors" (Claim 1, in part). Nor does Sandri disclose, teacn nor suggest "make a processor execution resource previously reserved for the first processor available to a second processor in the plurality of processors in response to the first logical processor being scheduled to enter an idle state due to lack of scheduling tasks " (Claim 10, in part). Nor does Sandri disclose, teach nor suggest "make a processor execution resource previously reserved for the first processor available to a second processor in the plurality of processors in response to the first logical processor being scheduled to enter an idle state due to lack of scheduled tasks" (Claim 15, in part). Nor does Sandri disclose, teach nor suggest "in response to a first logical processor in the plurality of logical processors being scheduled to enter an idle state due to lack of scheduled tasks" (Claim 20, in part). A prima facie case of anticipation has thus not been made with respect to Claims 1, 10, 15, or 20 and Claims 1, 10, 15 and 20 should therefore be allowed.

The Final Office action asserts that the elements of Claims 1, 10, 15 and 20 quoted above are found at Col. 5, lines 25-28 of Sandi. However, the Final Office Action utilizes improper paraphrasing in an attempt to insert into the Sandi references limitations that simply are not there. The quoted lines of Sandri state that "[wh]en logical processor 101 is finished using its

reserved resources, the resource descriptor needs to be updated accordingly, so that logical processor 102 can use the resources that logical processor 101 was using if it needs to." "Finished using its reserved resources" is not the same as "being scheduled to enter an idle state due to lack of scheduling tasks." For example, a logical processor could be finished using reserved resources, but still have additional scheduling tasks that require other resources. Furthermore, there is absolutely no suggestion in Sandri that a logical processor is scheduled to enter an idle state when it is finished using its reserved resources. The identical invention must be shown *in as complete detail as contained in the ... claim*." *Richardson v., Suzuki Motor Co*., 868 F. 2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). This requirement has not been met, and therefore a prima facie case of anticipation has not been made out with respect to Claim 1, Claim 10, Claim 15 nor Claim 20. For at least this reason, Claims 1, 10, 15 and 20 are allowable. In addition, Claims 2-9, which depend from Claim 1, are also allowable. In addition, Claims 11-14, which depend from Claim 10, are also allowable. In addition, Claims 16-19, which depend from Claim 15, are also allowable. In addition, Claims 21-28, which depend from Claim 20, are also allowable.

II. Claim Rejections -35 USC § 103(a)

The Office Action has rejected 4, 6-9, 11, 14, 25-28 under 35 U.S.C. 103(a) as unpatentable over Sandri. However, the Office Action has failed to meet its burden of makings it prima facie case of obviousness for the claims, and such rejections should be withdrawn.

The legal requirements for a prima facie case of obviousness are clear. "The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness." MPEP § 2142. It is well established that *prima facie* obviousness is only established when the

prior art reference (or references when combined) teach or suggest **all** the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991) (MPEP 2144) (emphasis added).

The Final Office Action rejects Claims 4 and 11 based on Sandri, and claims that "Sandri discloses wherein the first processor being scheduled to enter an idle state." (Final Office Action, paragraph 14). This is simply not so. Sandri does not disclose, teach, nor suggest the first processor being scheduled to enter an idle state. The prima facie case of obviousness has failed. It is well established that *prima facie* obviousness is only established when the prior art reference (or references when combined) teach or suggest **all** the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991) (MPEP 2144) (emphasis added). For at least these reasons, Claims 4 and 11 are allowable, and the rejection should be withdrawn.

The rejection of Claim 6 under 35 USC 103(a) relies on the above-discussed rejection of claim 2 as anticipated by Sandri. Therefore because the rejection of claim 2 cannot stand, as argued previously, the rejections of claim 6 also cannot stand for at least this reason and should be withdrawn.

The Final Office Action rejects Claims 7, 8, and 14 based on Sandri. However, Claims 7 and 8 depend from Claim 6 and Claim 14 depends from Claim 12. As discussed in the previous paragraph, the prima facie case of obviousness for Claim 6 is flawed and must be withdrawn. Accordingly, Claim 7 is allowable for at least the same reasons that Claim 6 is allowable. Claim 14 depends from Claim 12. As discussed in Section I regarding 102 rejections, the prima facie case of obviousness for Claim 12 has not been made. For at least these reasons, Claims 7 and 14 are allowable, and the rejection should be withdrawn.

The Final Office Action also rejects Claim 9 based on Sandri. However, Claim 9 depends from Claim 5. As discussed in Section I regarding 102 rejections, the prima facie case of obviousness for Claim 5 has not been made. For at least these reasons, Claim 9 is allowable, and the rejection should be withdrawn.

CONCLUSION

In view of these remarks, the application is now in condition for allowance and the Examiner's prompt action in accordance therewith is respectfully requested. The Commissioner is hereby authorized to charge any fees in connection with this communication to our Deposit Account No. 50-0221.

Respectfully submitted,

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